



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

429-16
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: December 7, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Terrence P. Morris, attorney
Carmen Fugazzotto, applicant
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to amend Special Permit #284-16

Applicant: Carmen Fugazzotto	
Site: 7-9 Arundel Terrace	SBL: 71001 0025
Zoning: MR2	Lot Area: 5,100 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The applicant received a special permit, Council Order #284-16 in October 2016, granting relief from maximum FAR for an attached garage which was built without the benefit of a building permit. The existing garage also violated side and rear setbacks, maximum lot coverage and minimum open space, creating a noncompliant structure. At the time of the special permit hearing, a variance was required to rectify the situation. However, in August 2016, the state Legislature enacted Chapter 184 of the Acts of 2016 relative to nonconforming structures. The act amended MGL Chapter 40A Section 7 by inserting language that states that noncompliant structures having been in existence for a period of at least ten years which have not been subject to an action, suit or proceeding as to the alleged violation have been deemed nonconforming structures subject to section 6 (of MGL 40A) and the local zoning ordinance relative to nonconforming structures. This new language has rendered these violations as nonconformities, which may be rectified by a section 6 finding from the City Council through the special permit process.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Carmen Fugazzotto, applicant, dated 4/26/2016

- Plot Plans, signed and stamped by Paul E. Pronovost,, surveyor, and James E. McLaoughlin IV, engineer, dated 3/15/2016
- FAR worksheet, submitted 4/26/2016
- Memorandum, prepared by Terrence P. Morris, attorney, dated 11/28/2016

ADMINISTRATIVE DETERMINATIONS:

1. MGL Chapter 40A Section 7 now provides those structures with violations which have been in existence beyond ten years without action to be resolved through a finding by the City Council that said structure is not detrimental to the neighborhood. The applicant's father built an attached carport many decades ago, without evidence of a building permit to do so. Some years later, the carport was enclosed to create a garage. A special permit #284-16 was granted to allow for an FAR that exceeded the maximum allowed by right. However, the structure still violates the side and rear setbacks, max lot coverage and minimum open space requirements. The changes to MGL 40A Section 7 now allow the applicant to rectify these violates through the special permit process with a finding by the City Council that allowing the structure to remain as is not detrimental to the neighborhood.

Condition 2.d of the Council Order states that no building permit shall be issued until the petitioner has... "obtained variances from the Board of Appeals for waivers of the rear and side setback, lot coverage and open space." This condition is no longer relevant nor required, as the changes to MGL Chapter 40A Section 7 have rendered these conditions nonconforming rather than noncompliant. Accordingly the petitioner is requesting that the Council order be amended to delete that condition.

In granting the relief requested in Special permit #284-16, the Council found that the increase in the nonconforming FAR is consistent with and not derogation of the size, scale, and design of other structures in the neighborhood. The special permit also contained a second finding that the "proposed increase in the nonconforming structure will not be significantly more detrimental than the existing nonconforming structure..." .

The change to MGL 40A Section 7 now provides that the Council may make the same finding with regard to the other dimensional standards in this case. Since the existing nonconforming structure possesses all of those nonconformities once considered to be in need of a variance but now known to have been legalized by the Act, it would appear that amending finding #2 in the special permit to specifically reference the side and rear setbacks, open space and lot coverage would bring the structure in compliance with the requirements of the statute and the zoning ordinance.

MR2 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	5,100 square feet	No change
Frontage	70 feet	60 feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	24 feet 0 feet 0 feet	No change No change No change
Max Lot Coverage	30%	35.9%	No change
Min Open Space	50%	48.%	No change
FAR	.58	.59	.65

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	To encroach into rear setback	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To encroach into side setback	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To exceed maximum lot coverage	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To be below minimum open space	S.P. per §7.3.3